

**ALASKA STATE LEGISLATURE  
SENATE JUDICIARY STANDING COMMITTEE**

February 10, 2021

1:34 p.m.

**MEMBERS PRESENT**

Senator Lora Reinbold, Chair  
Senator Mike Shower, Vice Chair  
Senator Shelley Hughes  
Senator Robert Myers  
Senator Jesse Kiehl

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

COVID-19 DISASTER DECLARATIONS~ EXTENSIONS

- HEARD

SENATE BILL NO. 14

"An Act relating to the selection and retention of judicial officers for the court of appeals and the district court and of magistrates; relating to the duties of the judicial council; relating to the duties of the Commission on Judicial Conduct; and relating to retention or rejection of a judicial officer."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 14

SHORT TITLE: SELECTION AND REVIEW OF JUDGES

SPONSOR(s): SENATOR(s) SHOWER

|          |     |                                 |
|----------|-----|---------------------------------|
| 01/22/21 | (S) | PREFILE RELEASED 1/8/21         |
| 01/22/21 | (S) | READ THE FIRST TIME - REFERRALS |
| 01/22/21 | (S) | JUD                             |
| 02/03/21 | (S) | JUD AT 1:30 PM BUTROVICH 205    |
| 02/03/21 | (S) | Heard & Held                    |
| 02/03/21 | (S) | MINUTE(JUD)                     |
| 02/05/21 | (S) | JUD AT 1:30 PM BUTROVICH 205    |

02/05/21 (S) Scheduled but Not Heard  
02/10/21 (S) JUD AT 1:30 PM BUTROVICH 205

**WITNESS REGISTER**

SCOTT STANSBURY, Consultant  
Process Safety Management  
Anchorage, Alaska

**POSITION STATEMENT:** Presented a PowerPoint on masks.

NATHAN MACPHERSON, Attorney  
The MacPherson Group, LLC  
Wasilla, Alaska

**POSITION STATEMENT:** Testified on COVID-19 mask policy.

ELEANOR ANDREWS, representing self  
Anchorage, Alaska.

**POSITION STATEMENT:** Testified with concerns on SB 14, noting that the current selection system is not broken.

KAREN BAKER, representing self  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in opposition to SB 14 because judges should be selected based on merit and process.

SERENE O'HARA-JOLLEY, representing self  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in opposition to SB 14 because it will politicize the judicial selection process.

ROBIN SMITH, representing self  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in opposition to SB 14 because it would interject politics into the judicial selection process.

MICHAEL GARVEY, Advocacy Director  
American Civil Liberties Union of Alaska (ACLU)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified with concern that SB 14 would politicize the selection and retention of judges.

LYNETTE PHAM, representing self  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in opposition to SB 14 because selecting judges should be based on merit, not politics.

BOB GROSECLOSE, Attorney

Fairbanks, Alaska

**POSITION STATEMENT:** Testified with concerns that SB 14 would tamper with an independent judiciary.

JAY SMITH, representing self

Eagle River, Alaska

**POSITION STATEMENT:** Testified off topic.

JIM MINNERY, Executive Director

Alaska Family Council

Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 14.

## **ACTION NARRATIVE**

1:34:25 PM

**CHAIR LORA REINBOLD** called the Senate Judiciary Standing Committee meeting to order at 1:34 p.m. Present at the call to order were Senators Kiehl, Shower, Myers, Hughes and Chair Reinbold.

### **COVID-19 DISASTER DECLARATIONS, EXTENSIONS**

1:35:02 PM

**CHAIR REINBOLD** announced that the committee would hear a presentation about masks.

1:36:34 PM

**SCOTT STANSBURY**, Consultant, Process Safety Management, Anchorage, Alaska, began a PowerPoint on mask policy. He said he has 35 years of experience in process safety management (PSM) and in [US Department of Labor, Occupational Safety and Health Administration] (OSHA) regulations and compliance. He served as a volunteer for a fire and emergency medical services (EMS) department in Texas for over 25 years. He has consulted in oil and gas, chemical, power generation, and the military specializing in risk analysis, risk mitigation and OSHA regulations.

**MR. STANSBURY** discussed OSHA regulations, requirements, and data on slide 2. He said that the federal government, states, and municipalities are exempt from OSHA regulations. He said he would focus on OSHA regulations covering the workplace, outside of the workplace, and public health. He offered his view that medical professionals do not have expertise in respiratory protection. He said that OSHA and NIOSH [the National Institute

for Occupational Safety and Health] are agencies with that expertise.

1:39:41 PM

MR. STANSBURY reviewed the OSHA and NIOSH respiratory protection, slide 3. Respiratory protection falls under air-purifying such as gas masks, or N95 particulate filtering masks or atmosphere-supplied air, such as air scrubbers. He provided examples currently being used, noting that self-contained atmosphere-supplied air sources are 100 percent effective from inhaling contaminated air.

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MR. STANSBURY turned to slide 4. He stated that respiratory protective devices, such as N95 masks, are considered by the Food and Drug Administration to be medical devices and must go through extensive testing. This includes material composition, filtration properties, and health effects for acute and chronic illnesses.

MR. STANSBURY turned to slide 5. He said respiratory protection is used to protect the body from virus contaminants described as droplets and aerosols. He noted that aerosols could stay airborne for extended periods depending upon air movement.

MR. STANSBURY turned to slide 6, N95 Respirator. He explained that the N95 respirators are for single use only and consist of four layers.

MR. STANSBURY turned to slide 7. Air-purifying respirators are designed to be effective to a specific micron level. He explained that a micron is a unit of measurement. The COVID-19 virus is 0.125 microns as compared to a human hair at 70 microns.

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MR. STANSBURY discussed respirator limitations on slide 8. He stated that an N95 mask is designed to be 95 percent effective at .3 microns. The smaller the particle size, the less chance the N95 has to stop the contamination from entering the lungs. The COVID-19 virus is 2.4 times smaller than what the respirator can stop. Most people wear non-surgical masks and cloth masks, often of loose weaver materials. He offered his view that a 600-count bedsheet would have more filtering properties than other fabrics. However, the space between the threads is 42.3 microns. This means that the virus is 388 times smaller than what a bedsheet fabric could stop.

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MR. STANSBURY turned to slides 9-10 to provide a visual perspective of sizes to illustrate how the virus could penetrate the cloth.

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MR. STANSBURY highlighted the problems with typical masks being used, including the cloth and non-surgical masks on slide 11. These masks are not NIOSH approved, the material has not been tested for acute and chronic effects and the masks do not seal or prevent aerosols from escaping or being inhaled. He quoted OSHA's website, "Cloth and non-surgical masks will not protect you against airborne, transmissible, infectious agents."

1:45:51 PM

MR. STANSBURY turned to slides 12-13. He said so many people catch the virus due to human factors. As the chart demonstrates, the more frequently a person performs a task, the more likely they are to make a mistake. People wearing masks constantly touch their faces to adjust the face covering and remove the masks to eat or drink but do not sanitize their hands before doing so. The masks allow droplets of aerosols to penetrate the fabric that can be inhaled. He provided examples based on his observations and personal experiences.

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MR. STANSBURY discussed slides 15-16 related to controlled studies. A study conducted in Denmark, consisting of 6,000 people (DaNMASK-19), required half of the participants to wear masks all of the time to protect themselves from SARS-CoV-2 infections. He reported that the contraction of the virus was statistically the same in terms of effectiveness. A study in Hanoi, Vietnam, tested cloth masks compared to medical masks in healthcare workers using three control groups. He reported that the penetration of cloth masks versus the control group rates for virus infection rates was higher for those wearing cloth masks.

MR. STANSBURY recapped that cloth and non-surgical masks do not form a tight seal, allowing exposure to droplets and aerosols. These masks do not have the required filtration properties. People constantly touch their faces, which increases the potential for catching COVID-19. He offered his view that masks exacerbate the transmission of the disease, so he recommends stopping the emergency orders.

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MR. STANSBURY pointed out that slide 17 lists the references used for his presentation.

[1:51:00 PM](#)

SENATOR KIEHL said he was not familiar with the study referenced that showed that masks cause infections. Still, he is familiar with the Fauci & Morenstauber study, which was peer-reviewed. The researchers said that the 1918 influenza pandemic caused lung irritation and the lack of modern medicine made it more likely that secondary infections would kill people. That study did not mention masks as a risk factor in any way. He asked for a citation for the study mentioned.

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MR. STANSBURY answered the reference is on slide 17.

SENATOR KIEHL noted that the slide has multiple references.

[1:52:29 PM](#)

SENATOR SHOWER asked if double masking would help. He asked about a study from Wuhan, China (that was peer-reviewed in the United Kingdom and China) that discussed zero asymptomatic transmission.

[1:53:17 PM](#)

MR. STANSBURY said cloth will never stop filtration and does not form tight seals, especially for men with beards. He offered his view that air gaps are always present with cloth, even if worn doubled or tripled. He indicated he was not familiar with a study from Wuhan.

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CHAIR REINBOLD informed Mr. Stansbury that everyone in the legislature tests for COVID-19, but all must wear masks or be subject to fines. She offered her belief that it violates inherent civil liberties. She said the federal credit union she uses does not serve customers unless masked. However, federal laws also prohibit wearing masks in banks. She provided other examples of mask requirements.

MR. STANSBURY replied that OSHA determines whether something is immediately dangerous to life and health in the workplace. Someone highly qualified must test the air quality and determine the type of respiratory protection needed. He offered his view that when employers do not follow OSHA evaluations, it could result in businesses violating the federal codes and

regulations. These businesses could be held liable for civil fines and criminal prosecution. He understood a federal law prohibits wearing masks in banks, but it falls outside his area of expertise.

1:58:50 PM

CHAIR REINBOLD expressed concern about maladies from wearing masks, including sties and acne.

MR. STANSBURY acknowledged that complications could occur when people do not wash their masks or for people with chronic respiratory diseases who have difficulty breathing. He characterized masks as useless.

2:01:30 PM

SENATOR KIEHL said infected persons do not expel individual viruses. Instead, they expel droplets and micron droplets that range in size from 1 micron to ten or more. He asked whether the size of a gap is the determinate factor for single-ply masks when multi-ply masks are recommended. He noted that the presenter discussed the value to wearers, but he did not speak to its protection to protect others from the transmission. He said he has generally read that masks are relatively effective in protecting the transmission of the expulsion of droplets. He suggested he address the difference between personal protection and source control.

MR. STANSBURY argued that the issue is that masks lack a seal so people can inhale aerosols that can stay airborne for days at a time.

2:04:26 PM

CHAIR REINBOLD pressed her position that mask requirements affect individual rights. She said people cannot travel on airlines unless they wear masks. She asked if he could address oxygen levels on planes.

MR. STANSBURY related his understanding that pressurized cabins have less oxygen.

2:06:26 PM

SENATOR SHOWER agreed that cabin air is more difficult to breathe. He compared it to problems people have traveling to Denver due to the elevation. He said an average aircraft is held to 6,000-8,000 foot level pressure when cruising at 30,000 - 25,000 feet.

CHAIR REINBOLD restated her concern about mask mandates since long-term safety and health effects are unknown.

2:08:40 PM

CHAIR REINBOLD introduced the next speaker, Mr. Macpherson, noting he is a friend.

2:11:09 PM

NATHAN MACPHERSON, Attorney, The MacPherson Group, LLC, Wasilla, Alaska, testified on mask policy. He began by quoting Emperor Julian, "If mere accusation is sufficient for conviction, what will become of the innocent?" This was Emperor Julian's retort to the plea of Delphidius, the accuser of Governor Numerius, who stood trial before the emperor. Emperor Julian's retort in the 4th century echoed the legal maxim that has been law across various empires for the past 3,500 years until now: the presumption of innocence.

MR. MACPHERSON said, "All of you have been accused of being infected with a highly contagious disease, a virus, even a deadly one. This constitutes defamation, per se, under Alaska law and the law of, I believe, all 50 states - the accusation of having a loathsome disease. All of you were forced to prove your innocence although no defendant in court is required to do so."

2:12:01 PM

MR. MACPHERSON stated that everyone must cover their faces even though the last testifier opined that cloth masks do not provide protection. He suggested that legislators are being accused of harboring COVID-19.

2:13:10 PM

MR. MACPHERSON said that due process is the foundation of common law and a fundamental right in American law. He said, "The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary and its enforcement lies at the foundation of the administration of our criminal law." He stated that Greenleaf traces this presumption to the Bible in his "Treatise on the Law of Evidence." He provided quotations to support the presumption of innocence, including quotes from Cicero, Roman Emperor Trajan, Alfred the Great, the Chief Justice of the King's Bench Sir John Fortescue, and a 1760 US Supreme Court decision. That decision, often referred to as Blackstone, enshrines the presumption of innocence into the American common law system.

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MR. MACPHERSON interpreted this presumption to mean that the law must consider people not contagious with COVID-19 until proven contagious. He referred to AS 18.15.385(d), the quarantine and isolation statute, which requires that "before quarantining or isolating an individual, the department shall obtain a written order from the superior court authorizing the isolation or quarantine." Even AS 18.15.385(e) that allows some administrative action in exigent circumstances reads, "Notwithstanding (d) of this section, when the department has probable cause to believe that the delay involving seeking a court order imposing isolation or quarantine would pose a clear and immediate threat to the public health..." It goes on to allow for an administrative quarantine but it requires a petition in the superior court and an emergency hearing within 48 hours to provide due process by allowing a court of law to make the determination that a person is a threat to fellow man, he said.

2:17:02 PM

MR. MACPHERSON said that people have the right to refuse unwanted medical treatment under the due process clause. He referred to a 1990 US Supreme Court case, Cruzan v. Director, Missouri Department of Health, which affirmed a person's right to refuse unwanted medical treatment. He said the informed consent doctrine has become firmly entrenched in American tort law. He said another 1990 case, Washington v. Harper found that the forceable injection of medication into a nonconsenting person's body represents a substantial interference with that person's liberty. He opined that this line of US Supreme Court decisions demonstrates constitutional protection against unwanted vaccination and intrusive examinations. This may apply to masks, he said. He questioned why people entering the capitol building are forced to answer questions in a public place, which is likely a violation of HIPAA [Health Insurance Portability and Accountability Act of 1996].

He said that Fourth Amendment rights are implicated. In 1891, in Union Pacific Railway Company v. Botsford, the US Supreme Court held that "no right is held more sacred or as more carefully guarded by the common law than the right of every individual to the possession and control of his own person, free from all restraint or interference of others unless by clear and unquestionable authority of law."

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MR. MACPHERSON said that in 2016, the US Supreme Court held in Birchfield v. North Dakota that warrantless drunk-driving blood tests are a violation of the Fourth Amendment. He opined that

any statute that would criminalize a refusal to submit to such blood tests is also in violation. He cited additional cases to emphasize the Fourth Amendment protections against unreasonable searches the US Supreme Court provided, which he felt directly correlated to mandates for masks and vaccines.

[2:21:09 PM](#)

MR. MACPHERSON read the Fourth Amendment of the US Constitution:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

MR. MACPHERSON argued that there is no probable cause that members are contagious since legislators entering the Capitol are screened for COVID-19. He reminded members that the Alaska quarantine statute requires probable cause.

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MR. MACPHERSON offered his view that the various orders issued in the Lower 48 and Alaska seem to lack a rational basis and are not narrowly tailored. He suggested that the highest level of scrutiny should be used to determine if the government can impose these burdens on people. He argued that the various orders cast large nets on the entire populous but the CDC's [Center for Disease Control's] data indicates only a small group have contracted the virus. The orders require people to wear masks, which manufacturers and Mr. Stansbury said do not stop the virus. He noted that conflicting data exist on mask effectiveness. He argued that arbitrary decisions are made on business closures and to determine essential workers. He said, "and consider the fact that when the government says you're not essential, are we surprised that suicides are on the rise. 'You're not essential - might as well just kill yourself.'"

CHAIR REINBOLD noted a point of order by Senator Kiehl.

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SENATOR KIEHL asked Chair Reinbold to maintain decorum so that no one accuses anyone of actively encouraging suicide when that did not happen.

CHAIR REINBOLD acknowledged the point of order.

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MR. MACPHERSON said several state courts have overturned some shutdowns. He highlighted the effects of COVID-19 mandates on people and families, citing some personal experiences. He lamented that other causes of death, including abortion and heart disease do not get proper attention.

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MR. MACPHERSON argued that people's First Amendment rights are infringed upon. He stated that freedom of speech is restricted by mandating masks because people communicate nonverbally and masks restrict facial gestures and alter voices. Individual rights for freedom of association are interrupted because mandates restrict people from congregating in groups. He argued that the mandates violate freedom of religion because the restrictions require masks and encourage people not to congregate in groups, including church services. He highlighted that requiring masks infringes on religious practices. He noted he sent Chair Reinbold links regarding these implications.

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MR. MACPHERSON discussed current and historic religious practices for many faiths that have been affected by the restrictions due to COVID-19. He argued that the mandates have led to people of faith meeting covertly, noting that several pastors were arrested for holding church services. He provided personal and historic examples to illustrate his point that people's religious beliefs have been violated.

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MR. MACPHERSON recapped his arguments against the COVID-19 mandates. He said that the presumption of innocence provides the foundation of the common law system in the United States. He said that all of these mandates and COVID-19 orders are based on a presumption of guilt, that a person is contagious until proven not contagious. He argued that even those proven not contagious are still required to wear a mask and socially distance. These requirements lack a reasonable basis and are not narrowly tailored to serve the legitimate police power of the state, he said. He offered his view that the many US Supreme Court cases demonstrate that fundamental constitutional rights are implicated. He cautioned that the entire substance of the republic was threatened by the abandonment of common law principles and the adoption of mandated practices. Science is being used to determine policy for the first time, people are considered guilty until innocent, and people are conditioned to

abandon the common law principles of the United State's republican form of government. He maintained his concern that government has infringed on people's fundamental rights to life, liberty and pursuit of happiness and he reiterated examples.

2:36:04 PM

SENATOR KIEHL said it was a fascinating presentation. He offered his view that it took some civil and criminal law and put it in a blender. It is difficult to tease out the principles that underlay the arguments because the arguments shifted. He stated that rather than take exception to the notion that drinking water standards or vehicle design rules are not based on science and that this is the first time science has ever dictated public policy, he would summarize the underlying premise. He said it seems that the underlying premise of the presentation suggests that government may not act to protect citizens from themselves or external harms in an emergency situation. He pointed out that government does that routinely in non-emergency situations, such as erecting a fence around a military institution or driver licensing that tests knowledge and requires a road test. He asked when and how the government could apply general standards for safety in a civil context.

MR. MACPHERSON said he believes Senator Kiehl misconstrued what he meant. He elaborated that strict scrutiny should be used where fundamental constitutional rights are affected. The measures undertaken in the past year were not narrowly tailored. Several courts that struck down the lockdown laws and church closures held exactly this. He echoed what the Pennsylvania court held regarding lockdowns or what other courts held that opened up churches in various locations.

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SENATOR SHOWER remarked that communist China is restricting Christians. He asked him to address whether airlines, hotels, grocery stores or other businesses restrict people.

MR. MACPHERSON provided a broad principle that just because the business is open to the public does not mean it can do whatever it wants to do. He said public accommodation laws apply certain constitutional principles to businesses that hold themselves out to the public. He provided several examples.

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SENATOR HUGHES asked if strict scrutiny was applied in the 1918 Spanish Flu Pandemic.

MR. MACPHERSON replied that he was not aware of any cases that arose due to the Spanish Flu Pandemic. He recalled masks and anti-masks were an issue, but he was unsure if it was tested in the courts.

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CHAIR REINBOLD brought up an issue she had with Alaska Airlines. She asked the record to reflect that her conversation with airline personnel was civil and no harsh words were spoken. The airline required her to wear two masks because her chin was not adequately covered. She acknowledged that she does not believe masks should be required. She asked him to comment on airlines requiring passengers to wear two masks in a pressurized compartment even if the person did not have a health care exemption. She said the governor's mandates required masks in state buildings. The mandates also required face coverings at churches when speaking to a clergy member. The health alert also indicated the distance between parked cars for Easter Services. She thanked him for his work on religious freedom.

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MR. MACPHERSON replied that the law has developed in the past hundred years. He cited Roe v. Wade, which broadened all aspects of case law regarding privacy. Private companies can dictate medical policy. The airlines have refused to accept personal physician's recommendations for their patients while traveling. He recalled that Delta Airlines has even subjected people to the airline's doctors, which appears to be a HIPAA [Health Insurance Portability and Accountability Act of 1996] violation. He referenced issues for several other court or administrative cases in which constitutional rights were an issue, including a soldier who was allowed to have a beard because of his religious beliefs. The US Army has restrictions on facial hair for the collective safety of soldiers. The same principles could be used when stopping a virus.

CHAIR REINBOLD understood him to imply that the airlines are practicing medicine without a license by overruling doctor's orders or recommendations.

MR. MACPHERSON stated he provided his doctor's note to Delta Airlines, but the airlines said their doctor advised something else.

CHAIR REINBOLD asked for his permission to submit the letter regarding practicing [medicine without a license] to the

committee. She informed members that Alaska Airlines indicated there were no exemptions [to their mask policy].

#### **SB 14-SELECTION AND REVIEW OF JUDGES**

[2:49:17 PM](#)

CHAIR REINBOLD announced consideration of SENATE BILL NO. 14, "An Act relating to the selection and retention of judicial officers for the court of appeals and the district court and of magistrates; relating to the duties of the judicial council; relating to the duties of the Commission on Judicial Conduct; and relating to retention or rejection of a judicial officer."

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CHAIR REINBOLD opened public testimony on SB 14.

[2:49:36 PM](#)

ELEANOR ANDREWS, representing self, Anchorage, Alaska, said she previously served for seven years on the Alaska Judicial Council. She offered her view that the judicial selection process is not broken. She emphasized that judges are not being charged with illegal activities, challenged for lack of legal rigor, or accused of crimes. She offered to provide written comments.

[2:50:41 PM](#)

to SB 14, because it would politicize judicial appointments in Alaska. She emphasized the importance of selecting the most qualified candidates as determined by the Alaska Judicial Council rather than to allow the governor to appoint any lawyer who has practiced in Alaska for a few years. She questioned Governor Dunleavy's past attorney general choices and said the governor is not always a good judge of character or fitness for judicial appointments. Alaska's Constitution created a good merit-based system for selecting and retaining judges. This is why a separate mechanism ensures that judicial appointments are made based on merit rather than politics.

[2:52:20 PM](#)

SERENE O'HARA-JOLLEY, representing self, Fairbanks, Alaska, spoke in opposition to SB 14. She said Alaska's judicial and retention system is not broken. She stated that a nonpartisan peer recommendation process provides an important separation of powers. She mentioned Senator Meyers' campaign promise not to get caught up in the power aspects of government. He also talked about the problems associated with expanding government. She opined that SB 14 is about expanding government into a process

that is working and infringes on the separation of powers. Allowing the legislative branch to select judges would expand the government's reach and allow ideology into the selection process.

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CHAIR REINBOLD cautioned testifiers to refrain from attacking individual legislators.

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ROBIN SMITH, representing self, Anchorage, Alaska, spoke in opposition to SB 14 because it would interject politics into the process of selecting judges. The framers of Alaska's Constitution benefitted from reviewing other states' constitutions. The Alaska Constitution creates a process to select and retain impartial, high-quality judges to remove a judge through a vote. According to the Brennan Center for Justice, the judicial selection process has become increasingly politicized. The judicial branch provides an important check on the other two branches of government. SB 14 would politicize the process.

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MICHAEL GARVEY, Advocacy Director, American Civil Liberties Union of Alaska (ACLU), Anchorage, Alaska, stated that the ACLU protects the civil rights and individual liberties enshrined in the US Constitution and the Alaska Constitution. The Alaska Constitution created a judicial system based on merit and independence. He said the Alaska Judicial Council is central to carrying out these values.

MR.GARVEY expressed concern that SB 14 would increase the influence of politics on Alaska's courts and undermine the state's long-revered merit selection system. The bill would allow the governor to appoint judges who the Alaska Judicial Council does not nominate as the most qualified, require legislative confirmation of these appointees, force Alaska Judicial Council nominees to pass an ideological litmus test and put the Commission on Judicial Conduct in charge of providing recommendations for retention elections rather than the Alaska Judicial Council, which already considers the commission's work. It is clear that SB 14 would increase the influence of politics on the courts were it to pass so that judicial openings would be based on the confirmation process rather than who is most qualified.

MR. GARVEY said the practical effect of SB 14 would be to weaken the performance of the state's judiciary while opening the system to the influence of the governor's office and the legislature.

2:58:55 PM

LYNETTE PHAM, representing self, Anchorage, Alaska, spoke in opposition to SB 14. This bill would give the governor more power, she said. She stated that judges should be selected based on their legal qualifications, fairness, and experience. She urged members to vote no on SB 14.

2:59:54 PM

BOB GROSECLOSE, Attorney, Fairbanks, Alaska, stated that he served on the Alaska Judicial Council (AJC) for a six-year term ending in 2006. He has also served a three-year term on the Commission on Judicial Conduct. He said this bill would politicize the judicial selection and retention system that has worked well. The framers of the Alaska Constitution developed a system to ensure an independent judiciary. The AJC screens applicants. He urged members to reject SB 14 because it does not further the design of the constitution and it would impede the state's ability to maintain and preserve an independent judiciary.

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JAY SMITH, self, Eagle River, Alaska, testified on the coronavirus but gave no testimony on SB 14.

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JIM MINNERY, Executive Director, Alaska Family Council, Anchorage, Alaska, urged members to support SB 14. He stated that the council believes that involving the executive and legislative branches in judicial selection would help promote a more accountable judiciary and enhance public confidence in Alaska's court system. The existing judicial selection process places too much authority in the Alaska Judicial Council, which is dominated by members of the Alaska Bar Association (ABA). The ABA is a professional guild with 2,300 active members representing less than one percent of the state's population, yet four of the seven council seats are held by its members. He said the consultants to the convention committee on the judiciary warned about this. He read an excerpt from Vic Fisher's book, Alaska's Constitutional Convention, as follows:

These sections in particular, however, go a long way toward withdrawing the judicial branch from the

control of the people of this state and placing it under that of the organized bar. No state constitution has ever gone this far in placing one of the three coordinate branches of the government beyond the reach of democratic controls. We feel that in its desire to preserve the integrity of the courts, the convention has gone farther than is necessary or safe in putting them in the hands of a private, professional group, however public spirited its members may be.

MR. MINNERY said that SB 14 does not cure every shortcoming in the current judicial selection process but it is a significant step in the right direction.

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CHAIR REINBOLD stated that public testimony would remain open.

[SB 14 was held in committee.]

[3:06:40 PM](#)

There being no further business to come before the committee, Chair Reinbold adjourned the Senate Judiciary Standing Committee meeting at 3:06 p.m.